

EXHIBIT 4

JOANN D. LEPKE
12-5-05**COPY**

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1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 C.A. No. 04-11362-RWZ

4 *****

5 BARRY LINTON,

6 Plaintiff,

7 v.

8 NEW YORK LIFE INSURANCE AND

9 ANNUITY CORPORATION,

10 Defendant.

11 *****

12 DEPOSITION OF JOANN D. LEPKE, a
13 witness called on behalf of the Defendant, taken
14 pursuant to the Federal Rules of Civil
15 Procedure, before Maureen O'Connor Pollard, RPR
16 and Notary Public within and for the
17 Commonwealth of Massachusetts, at the offices of
18 Ropes & Gray, One International Place, Boston,
19 Massachusetts, on the 5th of December, 2005,
20 commencing at 12:50 o'clock p.m.

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1 Q. What sort of things do you recall that
2 you did to evaluate whether or not you and your
3 husband should invest in a variable universal
4 life policy?

5 A. I did a lot of the initial weeding out
6 of looking at the Morningstar disk, doing a lot
7 of the phone calls to many of the different
8 insurance providers to see if they limited the
9 number of exchanges or if they allowed telephone
10 exchanges among the investment divisions. That
11 was one of the ways -- that was one of my
12 initial jobs.

13 Q. Did you participate in phone calls or
14 e-mail communications with Paul Redfearn, a New
15 York Life agent?

16 A. Yes.

17 Q. Did you participate in phone calls or
18 e-mail communications with any other agents?

19 A. No.

20 Q. When you referred to the review of the
21 Morningstar disk, what were you referring to?

22 A. Morningstar is a publication that we
23 purchased which gives data about different
24 products, they're more widely known for their

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1 investing in a New York Life variable universal
2 life policy, were you present for every
3 discussion that your husband had with him?

4 A. I don't know.

5 Q. And was your husband present for every
6 in person discussion that you had with him?

7 A. I don't know.

8 Q. Did Mr. Redfearn at any time that
9 you're aware of personally state or suggest in
10 any way that the 1999 policy in which you were
11 investing would be governed for all time by the
12 prospectus that existed in 1999?

13 A. Absolutely.

14 Q. And you were present for him saying
15 that?

16 A. Yes.

17 Q. And can you just tell me as precisely
18 as you can exactly the words you recall him
19 using, if you do recall the exact words?

20 A. He made it clear over and over from
21 front, back, sideways, upside down, top and
22 bottom that this prospectus would govern the
23 policy.

24 Q. And I take that, and that's -- I

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1 accept that, and now I just want you to tell me
2 whether beyond that, which I understand, you can
3 recall anything specific that he said about
4 that, or whether you're just recalling --

5 A. One of the things that he said on the
6 first mailing that I had of a new prospectus, I
7 called him and said "Paul, what is this new
8 prospectus in the mail? Why do I have it?" And
9 you said "I don't know, but it is my
10 understanding that the original prospectus
11 governs your policy. You can throw that one
12 away."

13 Q. So we're talking now about a 2000
14 prospectus?

15 A. 2000.

16 Q. You recall in or around May of 2000
17 receiving a year 2000 New York Life prospectus?

18 A. Yes.

19 Q. And in response to receiving that
20 prospectus, your testimony is you called Mr.
21 Redfearn?

22 A. Yes, worried.

23 Q. And worried about what?

24 A. Worried about why am I getting another

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1 prospectus when I had been assured that the 1999
2 prospectus was the prospectus that goes with our
3 policy.

4 Q. Did you review the year 2000
5 prospectus and --

6 A. No.

7 Q. The answer is?

8 A. No.

9 Q. So there was nothing in particular in
10 the 2000 prospectus which caused you to worry,
11 is that fair to say?

12 A. That is fair to say.

13 Q. It's simply the receipt of it that
14 caused you to worry?

15 A. Yes.

16 Q. Okay. And then you called Mr.

17 Redfearn sometime, we'll just stipulate it was
18 sometime around the time you received that
19 prospectus?

20 A. Yes.

21 Q. And you asked him the question?

22 A. Yes.

23 Q. And on that occasion he assured you
24 that it was his understanding that the 1999